

**Import Body Shop, Inc. and Jose T. Villazon and District Lodge No. 190, Local Lodge No. 1305, International Association of Machinists and Aerospace Workers, AFL-CIO. Cases 20-CA-15749 and 20-CA-15777**

July 22, 1982

### DECISION AND ORDER

BY MEMBERS JENKINS, ZIMMERMAN, AND  
HUNTER

On August 4, 1981, Administrative Law Judge Russell Stevens issued the attached Decision in this proceeding. Thereafter, Respondent filed exceptions<sup>1</sup> and a supporting brief, and the General Counsel filed cross-exceptions and a supporting brief.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the record and the attached Decision in light of the exceptions and briefs and has decided to affirm the rulings, findings,<sup>2</sup> and conclusions<sup>3</sup> of the Administrative Law Judge, as modified herein, and to adopt his recommended Order.

As the Administrative Law Judge found, Respondent unlawfully discharged Jose T. Villazon on September 3, 1980, the discharge to be effective on October 3, 1980. However, on September 27, 1980, Respondent, on finding reason to believe that Villazon had intentionally damaged the hood hinges of an automobile he was repairing, made the discharge effective immediately. The Administrative Law Judge found that Villazon is entitled to reinstatement to remedy the unlawful discharge of September 3, despite the subsequent minor damage that Villazon caused, in a moment of rage and frustration over Respondent's conduct toward him. However, the Administrative Law Judge found that Respondent independently discharged Villazon on September 27 because of this damage. Thus, the Administrative Law Judge would deny Villazon

backpay from September 27 to October 3, when the original, unlawful discharge became effective.

The Administrative Law Judge's rationale implies that the September 27 discharge was lawfully motivated by Villazon's misconduct. We find this implicit finding to be unwarranted. As the Administrative Law Judge properly found, Villazon's conduct was a predictable reaction to Respondent's flagrant denial of his rights under the Act. Villazon's conduct was not calculated to cause serious damage, nor did it. Moreover, Respondent's testimony regarding the relationship between the damage and the discharge was, as the Administrative Law Judge found, "inconsistent, self-contradictory and unconvincing," even as to whether the damage incident was its motivating reason. Thus, Respondent's president testified first that he fired Villazon before October 3 because he was doing "sloppy jobs . . . and he was trying to ruin my quality work." Later he testified that he told Villazon that he was letting him go because "I don't want any more damage in my shop," and "I don't think you want to work here anymore." Subsequently, he testified that he did not "exactly" tell Villazon why he was being fired, and, still later, that he fired Villazon because he observed that Villazon "wasn't too happy when he was working, the workmanship he wasn't really doing properly." Finally, Respondent's president settled on the damaged hinges as the reason for the discharge.

We conclude that, to the extent Respondent claims to have relied on the damaged hinges, such reliance is a pretext designed to allow Respondent to escape the consequences of its prior unlawful discharge. For, rather than taking a straightforward position that it regarded Villazon's misconduct as its motivation for discharging him, Respondent first attempted to create the impression that it took Villazon's conduct as evidence that he was unhappy and therefore should not work there anymore. Such a concern with Villazon's job satisfaction is patently disingenuous in view of the fact that what had gotten under Villazon's skin by September 27, as Respondent could hardly have forgotten, was his imminent unlawful termination (on October 3) pursuant to the notice it gave him earlier in the month. The hinges incident thus provided a device by which Respondent could accelerate and attempt to erase the original discharge. Since it already had manifested its intention to discharge Villazon for unlawful reasons, we are bound to view with skepticism its superimposed reason. In these circumstances we find irrelevant our dissenting colleague's observation that there is no evidence that other employees who willfully damaged property were

<sup>1</sup> We hereby deny the General Counsel's motion to reject Respondent's exceptions as these exceptions were timely served by mail.

<sup>2</sup> The General Counsel has excepted to certain credibility findings made by the Administrative Law Judge. It is the Board's established policy not to overrule an administrative law judge's resolutions with respect to credibility unless the clear preponderance of all of the relevant evidence convinces us that the resolutions are incorrect. *Standard Dry Wall Products, Inc.*, 91 NLRB 544 (1950), *enfd.* 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing his findings.

<sup>3</sup> The Administrative Law Judge incorrectly stated that the presumption of a union's continued majority status following the expiration of a contract extends for 1 year. The presumption continues until it is rebutted. *Sahara-Tahoe Corporation, d/b/a Sahara-Tahoe Hotel*, 229 NLRB 1094 (1977), *enfd.* 581 F.2d 767 (9th Cir. 1978).

not discharged.<sup>4</sup> Our dissenting colleague's further comment that there is no evidence that Villazon would not have been discharged even absent Respondent's unlawful motivation assumes that this is a "dual motive" case, which it is not, and inexplicably places on the General Counsel the burden which, if it were a "dual motive" case, would have shifted to Respondent. *Wright Line, a Division of Wright Line, Inc.*, 251 NLRB 1083, 1089 (1980). Applying the correct "dual motive" test (assuming, *arguendo*, its applicability), Respondent has not shown that, absent Villazon's imminent termination pursuant to the unlawful notice of discharge, it would have discharged him on September 27. Villazon is therefore entitled to backpay from September 27, 1980. The Administrative Law Judge's recommended "Remedy" is hereby amended accordingly.<sup>5</sup>

### ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board adopts as its Order the recommended Order of the Administrative Law Judge and hereby orders that the Respondent, Import Body Shop, Inc., San Francisco, California, its officers, agents, successors, and assigns, shall take the action set forth in the said recommended Order.

MEMBER HUNTER, concurring in part and dissenting in part:

I agree with the majority in adopting the Administrative Law Judge's finding that Respondent violated Section 8(a)(5) and (1) of the Act by soliciting employees to deal directly with Respondent rather than through the Union, and violated Section 8(a)(3) and (1) of the Act by discharging employee Jose T. Villazon because he refused to deal directly with Respondent rather than through the Union. However, I disagree with their adoption of the Administrative Law Judge's finding that Villazon is entitled to reinstatement and backpay.

As the Administrative Law Judge found, Respondent violated Section 8(a)(3) when it notified Villazon on September 3, 1980, that he was dis-

charged, effective October 3, 1980. On September 26, 1980, more than 3 weeks after the discharge notice, Villazon intentionally damaged the hood hinges of an automobile he had been assigned to repair. Thereupon Respondent accelerated Villazon's discharge date and terminated him on September 27. According to uncontradicted testimony by Respondent's president, Villazon was paid through October 3.

Contrary to the majority, I do not find Villazon's conduct excusable as "a predictable reaction" to Respondent's denial of his rights. Villazon's destruction of the hood hinges occurred well after he was notified that his employment would be terminated, and there is no evidence of any other action by Respondent occurring close to the date of his conduct which might be said to have provoked it. In such circumstances Villazon's conduct appears to be the result of a calculated decision to harm Respondent by intentionally damaging a customer's property rather than a spontaneous outburst in response to Respondent's unlawful conduct. I also do not find the damage caused by Villazon's conduct insignificant. Although my colleagues find the damage was not serious, it was significant enough to require replacement of the hinges at Respondent's expense, and Respondent had to notify the customer's insurance company that a part not originally damaged had been replaced. Finally, contrary to the majority, there is no evidence that any reliance by Respondent on the damage to the hinges in accelerating Villazon's discharge was pretextual. Thus, there is no evidence that other employees who willfully damaged a customer's property were not discharged, or that, even absent Villazon's refusal to deal directly with Respondent, he would not have been discharged for causing such damage. In view of these circumstances, I would find that Villazon's conduct was sufficiently egregious to render him unfit for further service. See *O. R. Cooper and Son*, 220 NLRB 287, fn. 1 (1975). Accordingly, I dissent from the imposition of the reinstatement and backpay remedy here.

### DECISION

#### STATEMENT OF THE CASE

RUSSELL STEVENS, Administrative Law Judge: This case was heard in San Francisco, California, on June 11, 1981.<sup>1</sup> The consolidated complaint, issued on November 28, is based on a charge filed in Case 20-CA-15749 on October 16 by Jose T. Villazon,<sup>2</sup> an individual, and a charge filed in Case 20-CA-15777 on October 28 by District Lodge No. 190, Local Lodge No. 1305, Interna-

<sup>4</sup> Villazon's impulsive damaging of the hinges is not on a par with the calculated action of the discriminatees in *O. R. Cooper and Son*, 220 NLRB 287 (1975), cited by our dissenting colleague. Those discriminatees drove to another town late at night in order to slash 18 tires on a company truck.

<sup>5</sup> As our dissenting colleague notes, Respondent's president testified that he paid Villazon through October 3. Our finding that Villazon is entitled to backpay from September 27 does not, of course, require Respondent to pay him twice for the period between September 27 and October 3. The actual amounts due and owing are to be resolved in the compliance stage of this proceeding.

In accordance with his dissent in *Olympic Medical Corporation*, 250 NLRB 146 (1980), Member Jenkins would award interest on the backpay due based on the formula set forth therein.

<sup>1</sup> All dates hereinafter are within 1980, unless otherwise stated.

<sup>2</sup> Individuals are referred to herein by their last names.

tional Association of Machinists and Aerospace Workers, AFL-CIO (the Union). The (consolidated) complaint alleges that Import Body Shop, Inc. (Respondent), violated Section 8(a)(1), (3), and (5) of the National Labor Relations Act (Act).

All parties were given full opportunity to participate, to introduce relevant evidence, to examine and cross-examine witnesses, to argue orally, and to file briefs. A brief, which has been carefully considered, was filed on behalf of the General Counsel. Respondent filed no brief.

Upon the entire record, and from my observation of the witnesses and their demeanor, I make the following:

#### FINDINGS OF FACT

##### I. JURISDICTION

At all times material herein Respondent, a California corporation with an office and place of business in San Francisco, California, has been engaged in the retail service and repair of automobiles owned by individuals. During the calendar year 1979 Respondent, in the course and conduct of its business operations, derived gross revenues in excess of \$500,000, and purchased and received at its San Francisco, California, facility products, goods, and materials valued in excess of \$5,000 from other enterprises located within the State of California, each of which other enterprises had received said products, goods, and materials directly from places outside the State of California.

I find that Respondent is now, and at all times material herein has been, an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

##### II. THE LABOR ORGANIZATION INVOLVED

District Lodge No. 190, Local Lodge No. 1305, International Association of Machinists and Aerospace Workers, AFL-CIO, is, and at all times material herein has been, a labor organization within the meaning of Section 2(5) of the Act.

##### III. THE ALLEGED UNFAIR LABOR PRACTICE

###### A. Background<sup>3</sup>

Respondent is a small automobile body repair shop with approximately three employees. Its president is Edward Navarro. Respondent had a collective-bargaining agreement with the Union, effective from June 1, 1977, to June 1, 1980. The unit of employees covered by the agreement was:

All journeymen, automotive mechanics, machinists, motorcycle, electrical fender body, radiator, frame, welders, trimmers, radio, erection and/or construction machinists and heavy duty repair men, specialists, apprentices, foremen, testers, tower men, dispatchers, service salesmen, and all other mechanics working on automotive equipment or electrical equipment employed by Respondent at its San Francisco, California facility or at any industrial or

construction job site; excluding all other employees, office clerical employees, guards and/or supervisors as defined by the Act.

Prior to expiration of the agreement, the Union wrote a letter to Respondent, dated March 26, 1980, reading as follows:<sup>4</sup>

March 26th, 1980

Tony's Imported Auto Body  
120-11th St.  
S.F. Ca 94118  
Gentlemen:

Pursuant to the collective bargaining Agreement presently existing between this Union and your Organization, notice is hereby given of our intention to amend, modify and revise this Agreement.

So that negotiations will be concluded prior to the termination of the existing Agreement, it is requested that arrangements be made for negotiating meetings and that you advise us, at your earliest possible opportunity, when it will be possible to meet with you for such purpose. Upon receipt of such notification from you, we will submit our proposals to you for amendments, modification and revision of the present Agreement.

Very truly yours,  
J. B. MARTIN,  
Area Director  
Automotive Machinists  
Lodge No. 1305

JBM:rh  
OPE:3:AFL-CIO(21)

On July 28 Navarro responded to the Union's letter, as follows:

July 28, 1980

Automotive Machinist Lodge 1305  
1750 Market Street  
San Francisco, CA 94102  
Gentlemen:

This is to inform you that due to the present business situation, I will not be able to afford to sign the new contract with the Union.

If you have any questions about this matter, please contact me at 431-4606.

Very truly yours,  
Edward A. Navarro  
Owner

The parties never negotiated for a new contract, nor was a new contract ever signed or agreed to.

<sup>3</sup> This background summary is based on stipulations of counsel and on credited testimony and evidence that is not in dispute.

<sup>4</sup> Navarro's denial of ever having seen this letter is given no credence. Counsel stipulated that the return receipt for the letter was signed by Mel Lee, Respondent's shop manager. Lee's supervisory status is not in dispute.

In August 1980 Respondent's employees were Lee, Villazon, Mike Casanova, and Ortiz (first name not established at the hearing). Approximately in mid-August, Navarro talked in the shop with Villazon, Casanova, and Ortiz, all of whom were union members, told them he could not afford the increase provided under the proposed union contract, and also told them that, if he were required to pay the increases, he probably would close the shop. Navarro told the employees that he would not sign a new contract with the Union, but that, if they wanted to continue to work on his terms, they could do so. Those terms were continuation of their then existing wages, and benefits including a welfare plan, a pension plan paid directly to the employees, and a dental plan. He told the employees they would have the same benefits they had under the last union contract and that, if business improved, they would be given raises.

On September 3 Navarro wrote letters to Villazon, Casanova, and Ortiz, reading as does the following letter to Villazon:

September 3, 1980

Mr. Jose T. Villazon  
3755 Army Street  
San Francisco, CA 94110

Dear Mr. Villazon:

This letter is to inform you that due to the business situation, we will not be able to afford to sign the new contract with the Union.

This is also a 30 days notice so that you can look for another job with an Union shop.

If you wish to discuss this matter, please contact me personally.

Very truly yours,  
/s/ Edward A. Navarro  
Edward A. Navarro  
Owner

Casanova quit his job after receiving Navarro's letter, and went to work for a union shop. Ortiz and Navarro came to an understanding, and Ortiz still is employed by Respondent. Villazon told Navarro that he could not work under the conditions offered by Navarro, and Villazon then started to look for work elsewhere in a union shop.

On September 23 George Sanderson, a union business representative, met with Navarro and gave him two copies of the Union's proposal for a new contract to supplant the expired agreement. The proposal provided, *inter alia*, for increased wages. Either at that meeting, or some time later, Navarro told Sanderson that business was bad, and he could not afford to sign the Union's proposed agreement.<sup>5</sup>

Villazon was a body and fender repairman for Respondent from April 21, 1978, until September 27, 1980. His employment largely was uneventful until the events discussed *infra*. An exception was an incident in Decem-

ber 1979, wherein he was not paid for loss of employment on December 31, 1979, when the shop was closed when he reported for work that day. Other employees had agreed with Navarro not to work, or be paid for the day, on December 31, 1979, but Villazon did not make such an agreement with Navarro. Villazon complained to Sanderson about not being paid for the day, and Sanderson visited Navarro at the shop to discuss the matter. As a result of their conversation Navarro paid Villazon for the day, and he also paid the other employees for the day of December 31, 1979.

In late September a Toyota automobile was in Respondent's shop for repair of a damaged front end, and the job was assigned by Lee to Villazon, at approximately 4 or 4:30 p.m. Soon thereafter, Lee discovered that the car's hood hinges were damaged (this key issue is discussed in detail *infra*), and he believed Villazon intentionally caused the damage. Lee upbraided Villazon, and, shortly thereafter, reported the incident to Navarro and showed him the damaged parts. Villazon already had left for the day, and the following morning approximately at 8 o'clock, September 27, Navarro fired Villazon.<sup>6</sup> Villazon reported his discharge to Sanderson, who called Navarro on the telephone to talk about the incident. Sanderson asked if Villazon had been fired or laid off, and Navarro replied that he had been laid off. Sanderson asked if Villazon could apply for unemployment compensation, and Navarro said yes. Villazon later applied for compensation, but Navarro wrote to the unemployment commission and stated that Villazon had been fired rather than being laid off, as a result of which payment on the compensation check was stopped.<sup>7</sup>

#### B. Direct Dealing With Employees

Paragraph 10 of the complaint alleges that, in late July or early August 1980, and on or about September 3, 1980, Navarro dealt directly with Respondent's employees by soliciting employees to enter into individual employment contracts.

The collective-bargaining agreement between Respondent and the Union expired on June 1, 1980. There is a presumption that the Union represented Respondent's employees for a period of 1 year after expiration of the contract, and Respondent did not rebut that presumption. During the 1-year period of continued majority status for the Union, it is incumbent upon Respondent to bargain exclusively with the Union relative to wages, hours, and all other working conditions of employees. Any attempt within that 1-year period to deal directly with employees, rather than with the Union, relative to wages, hours, and working conditions constitutes a violation of the Act.<sup>8</sup>

<sup>5</sup> Villazon testified that Navarro never told him he was fired, but that statement is given no credence. Villazon was not a generally credible witness, and his contention simply is not in accord with the record, or with Villazon's own testimony wherein he said Navarro "cancelled me and he pay me all my money [note: meaning vacation pay and accrued wages, as explained by Villazon]."

<sup>7</sup> This unemployment compensation matter was described by Sanderson and Villazon. Navarro did not deny the related facts, and Sanderson and Villazon are credited relative to this incident.

<sup>8</sup> *D & H Manufacturing Co.*, 239 NLRB 393 (1978); *The Washington Post Company*, 237 NLRB 1493 (1978).

<sup>6</sup> Navarro and Sanderson disagreed on the sequence of events concerning Navarro's refusal to sign a new contract, but they agree that Navarro refused to sign, and the discrepancies in their testimony are irrelevant.

Navarro acknowledged that, in August, he talked with the three shop employees, Villazon, Ortiz, and Casanova, and told them that they could continue to work, but only upon his terms and without a union contract.<sup>9</sup> Navarro also acknowledged talking with the same three employees later, after he wrote them letters on September 3, about entering into a personal arrangement relative to their continued employment by Respondent.<sup>10</sup> Finally, Navarro acknowledged that he was successful in coming to a personal agreement with Ortiz, who still works for Respondent pursuant to the terms of that agreement.<sup>11</sup>

The allegations of this paragraph of the complaint are fully supported by the record.

### C. Villazon's Discharge

Villazon, Navarro, and Lee testified to a limited extent about Villazon's work, and the complaints, or absence thereof,<sup>12</sup> concerning that work. However, that testimony is irrelevant to the issues, since Navarro testified that Villazon's work performance had nothing to do with his discharge; that the discharge was occasioned solely by the matter of the damaged hood hinges, discussed *infra*.

Navarro testified that he fired Villazon on September 27, shortly before expiration of the 30-day notice given in Navarro's letter of September 3, because of Lee's report to him concerning damage to hood hinges on a car. Villazon denied that he damaged the hinges, and Lee described the incident. Lee testified that, after the automobile had been in the parking lot for 2 or 3 days, he and an insurance adjustor examined the car in detail, and Lee mentioned to the adjustor that he was surprised about the hinges not being damaged—he remembered the hinges because they had been replaced by Respondent 2 months earlier as a result of another accident. The hinges were free of defect. Immediately after the inspection, the car was turned over by Lee to Villazon for repair, and Lee then went into the office. Lee saw Villazon through the office window, looking at the car but not working on it because the workday was near the end. A little later he heard some banging on the car and saw Villazon doing something, which he assumed was an effort to straighten out a part. After Villazon had the car approximately 20 minutes, he motioned for Lee to come over, and asked, "[W]hat about the hinges?" Lee replied that there was nothing wrong with the hinges. The hood was up and Lee looked at the hinges. He was greatly surprised to see they were damaged. A sledge hammer was lying nearby, and the hinges were dented as if by a chisel, and the flanges had been forced apart. Lee asked

Villazon "why did you do that?" and Villazon did not reply. Villazon then remarked that "they're damaged," and Lee said, "not from any collision or impact." Lee then left the scene, and later reported the incident to Navarro. A second insurance adjustor took pictures of the damage but the hinges had to be replaced at Respondent's expense.

Villazon denied damaging the hinges. Lee was a credible witness, and Villazon was not. Lee's description of the incident is accepted as accurate, and it is found that Villazon intentionally damaged the hinges. The General Counsel argues that Respondent produced no documentary proof of the damage, but that argument is not persuasive. Lee closely was observed on the witness stand, and, although the General Counsel argues that Lee wanted Respondent to "prevail" in these proceedings, there was no indication that Lee was stating anything other than the truth. Of all the witnesses who testified, only Lee appeared to present a story with the ring of truth about it. The relationship of the damage to Villazon's discharge is another matter, discussed *infra*.

Navarro's testimony concerning Villazon's discharge was inconsistent, self-contradictory, and unconvincing. Navarro testified that he talked with Villazon early in the morning, the day after the hinges were damaged:

A. And exactly I tell I'm sorry because I'm going to let him go today because I don't want any more damage in my shop and here is your check, your vacation check, your full pay for the week or to the 3rd or whatever, you know, and there is no mean intention to do it but I think you don't want to work here anymore. He then want to fight with me. He say just go outside and fight with me. I say I'm sorry, I just give a job, I don't fight with nobody.

Q. All right. Did you tell him exactly why you were firing him?

A. Well, not exactly.

Navarro subsequently stated that he told Villazon that Villazon had damaged the hood hinges. At another point in his testimony, Navarro stated, "Well, the reason is I fire him, you know, because I was noting he wasn't too happy when he was working, the workmanship he wasn't really doing properly you know." Navarro indicated at one point that he did not discuss the hinges with Villazon at the time of the discharge, but later indicated the contrary. However, as noted *supra*, it appears from the testimony as a whole, that Villazon was fired on September 27 because he intentionally damaged the hood hinges.

However, Villazon was as unconvincing as Navarro. He testified that things never were the same for him in the shop after the incident in January 1980 concerning the pay for December 31, and that Navarro was unfriendly after that date. That testimony seemed self-serving and strained and is given no credence. Villazon indicated that Navarro wanted to get rid of him because Navarro did not want any union members working for Respondent, but that testimony also appeared strained and unlikely and is not credited. Navarro denied the allegation. So far as the record shows, Ortiz still is a union

<sup>9</sup> Navarro testified that business was bad, and that he could not afford to sign a new agreement with the Union, but that testimony was not supported by any evidence, and is given no credence.

<sup>10</sup> The exact dates of these conversations were not established at the hearing, but that fact does not affect any finding, since there is no dispute about their being within the 1-year presumptive period.

<sup>11</sup> Navarro's testimony that he did not know Respondent's collective-bargaining agreement had an automatic renewal clause, and that he did not know he had a continuing duty to bargain with the Union, is irrelevant.

<sup>12</sup> Villazon's testimony concerning the incident about backpay in December 1979 and Navarro's alleged changes of attitude toward Villazon and Navarro's rebuttal of that testimony are given no weight. The relevance of that testimony is marginal, and of little, if any, significance.

member. Counsel stipulated that, if recalled on rebuttal, Villazon would deny that he asked Navarro to fight at the time of discharge.

A principal question is whether Villazon was fired on September 3, with a 30-day notice, or whether he was not fired until September 27. Navarro stated unequivocally, at the hearing, to his employees, and to the Union, that he could not afford to pay increased union wages and would not sign a new contract that included an increase. Navarro acknowledged talking with the three rank-and-file employees about working for their existing wages, and the actions of Casanova and Ortiz are not in dispute. Casanova quit and Ortiz worked out an individual agreement with Navarro. Villazon's testimony that he talked with Navarro and said he could not work under the conditions Navarro proposed is credited. Villazon's testimony that he started looking for another job after he received Navarro's letter of September 3 is credited. The letter to Villazon is clear and final—it stated, *inter alia*, "This is also a 30 days notice so that you can look for another job with a Union shop." Patently, Villazon was fired on September 3, effective October 3. Navarro orally offered an alternative, i.e., a personal contract with Villazon, but that offer was rejected. Villazon was justified to, and did, consider the letter as a discharge notice. Navarro later confirmed the discharge to the unemployment compensation authorities.

Navarro's reason for firing Villazon is equally clear. Navarro acknowledged that he would not sign a new contract with the Union, and that any employee who would not work on his terms would be fired—the letter of September 3 and Navarro's conversations with the employees taken together state just that. Only by relinquishing his ties with the Union could Villazon have retained his job.<sup>13</sup> Villazon refused to relinquish those ties, as he was entitled to do. Navarro's discharge of Villazon because of the latter's refusal to relinquish his reliance on the Union as his bargaining agent, and his refusal to work upon Navarro's terms, during the time when the Union still was the representative of the shop's employees, was a violation of Section 8(a)(3) and (1) of the Act, as alleged.

#### IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of Respondent set forth in section III, above, occurring in connection with its operations described in section I, above, have a close, intimate, and substantial relationship to trade, traffic, and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

#### V. THE REMEDY

Having found that Respondent has engaged in certain unfair labor practices in violation of Section 8(a)(1), (3), and (5) of the Act, I shall recommend that it be ordered

<sup>13</sup> Villazon's testimony that he received the letter of September 3 after he refused Navarro's offer of an individual agreement is consistent with the facts of record, and is credited.

to cease and desist therefrom and to take certain affirmative action designed to effectuate the policies of the Act.

It has been found that Respondent unlawfully discharged Jose T. Villazon. I will, therefore, recommend that Respondent offer Villazon his former job or, if that job no longer exists, to a substantially equivalent job, without prejudice to his seniority and other rights and privileges, and make him whole for any loss of earnings suffered by reason of the discrimination against him, by payment to him of a sum of money equal to that which he normally would have earned, absent the discrimination, less net earnings during such period, with interest thereon to be computed in the manner prescribed in *F. W. Woolworth Company*, 90 NLRB 289 (1950), plus interest as set forth in *Isis Plumbing & Heating Co.*, 138 NLRB 716 (1962), and *Florida Steel Corporation*, 231 NLRB 651 (1977). It is recommended that backpay commence on October 3, 1980, which is the effective date of discharge given in Navarro's letter of September 3 to Villazon. It is further recommended that Respondent preserve and make available to the Board, upon request, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary and useful to determine the amounts of backpay due and the rights of reinstatement under the terms of these recommendations.

As found above, Villazon intentionally damaged a pair of hood hinges after he learned that he had been fired and after he received Navarro's letter of September 3. However, the damage he caused was minor, and of no great monetary loss to Respondent. Villazon had worked for Respondent since April 1978, and other than a few minor matters not specifically described had been a satisfactory and productive employee. The automobile the hinges were on already had been extensively damaged (the repair bill was approximately \$1,300), and the additional damage caused by Villazon added but little to what already was done. It is apparent that Villazon's actions were the result of rage and frustration, and were not intended to harm anyone or to seriously interfere with Respondent's business. Navarro's action in firing Villazon because the latter refused to relinquish his reliance on the Union was a flagrant denial of Villazon's rights under the Act and was a move that inevitably would result in anger and resentment. Villazon's simple act of retaliation was predictable and was not adequate basis on which to deny Villazon's reinstatement by Respondent. However, the damage to the hinges was intentional, and Respondent was required to pay those damages. Possibly discipline would have been forthcoming, but for the fact that Villazon already had been fired on September 3. In any event, the discharge of September 3 was unlawful. Had the hinge incident not occurred, Villazon would have been on the payroll until October 3. Therefore, it is recommended that his backpay commence October 3, rather than the date Villazon was fired because of the hinges; i.e., September 27.

Upon the basis of the foregoing findings of fact, and upon the entire record, I make the following:

## CONCLUSIONS OF LAW

1. Import Body Shop, Inc., is, and at all times material herein has been, an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. District Lodge No. 190, Local Lodge No. 1305, International Association of Machinists and Aerospace Workers, AFL-CIO, is, and at all times material herein has been, a labor organization within the meaning of Section 2(5) of the Act.

3. Since June 1, 1977, and at all times material herein, the Union has been the exclusive collective-bargaining representative of Respondent's employees in the following appropriate unit:

All journeymen, automotive mechanics, machinists, motorcycle, electrical, fender body, radiator, frame, welders, trimmers, radio, erection and/or construction machinists and heavy duty repair men, specialists, apprentices, foremen, testers, tower men, dispatchers, service salesmen, and all other mechanics working on automotive equipment or electrical equipment employed by Respondent at its San Francisco, California facility or at any industrial or construction job site; excluding all other employees, office clerical employees, guards and/or supervisors as defined by the Act.

4. Respondent violated Section 8(a)(3) and (1) of the Act by discharging Jose T. Villazon because he refused to deal directly with Respondent rather than through the Union.

5. Respondent violated Section 8(a)(5) and (1) of the Act by soliciting employees to deal directly with Respondent rather than through the Union.

6. The aforesaid unfair labor practices affect commerce within the meaning of Section 2(6) and (7) of the Act.

Upon the foregoing findings of fact and conclusions of law, and upon the entire record, and pursuant to Section 10(c) of the Act, I hereby issue the following recommended:

ORDER<sup>14</sup>

The Respondent, Import Body Shop, Inc., San Francisco, California, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Dealing directly with its employees in the appropriate bargaining unit by soliciting employees to enter into individual employment contracts.

(b) Discharging any appropriate unit employee because the employee refused to deal directly with Respondent rather than through the Union.

(c) In any other manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them in Section 7 of the Act.

<sup>14</sup> In the event no exceptions are filed as provided by Sec. 102.46 of the Rules and Regulations of the National Labor Relations Board, the findings, conclusions, and recommended Order herein shall, as provided in Sec. 102.48 of the Rules and Regulations, be adopted by the Board and become its findings, conclusions, and Order, and all objections thereto shall be deemed waived for all purposes.

2. Take the following action necessary to effectuate the policies of the Act:

(a) Offer Jose T. Villazon immediate and full reinstatement to his former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to his seniority or other rights and privileges, and make him whole for his loss of earnings in the manner set forth in "The Remedy" section of this Decision.

(b) Preserve and, upon request, make available to the Board or its agents all payroll and other records necessary to compute the backpay and reinstatement rights set forth in The Remedy section of this Decision.

(c) Post at its San Francisco, California, facility copies of the attached notice marked "Appendix."<sup>15</sup> Copies of said notice, on forms provided by the Regional Director for Region 20, after being duly signed by its authorized representative, shall be posted by Import Body Shop, Inc., immediately upon receipt thereof and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Import Body Shop, Inc., to insure that said notices are not altered, defaced, or covered by any other material.

(d) Notify the Regional Director for Region 20, in writing, within 20 days from the date of this Order, what steps have been taken to comply herewith.

<sup>15</sup> In the event that this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

## APPENDIX

NOTICE TO EMPLOYEES  
POSTED BY ORDER OF THE  
NATIONAL LABOR RELATIONS BOARD  
An Agency of the United States Government

After a hearing at which all sides had an opportunity to present evidence and state their positions, the National Labor Relations Board found that we have violated the National Labor Relations Act, as amended, and has ordered us to post this notice.

WE WILL NOT violate Section 8(a)(3) and (1) of the National Labor Relations Act by discharging employees because they refuse to deal directly with us rather than through their Union.

WE WILL NOT violate Section 8(a)(5) and (1) of the Act by soliciting employees to deal directly with us rather than through their Union.

WE WILL NOT in any other manner interfere with, restrain, or coerce our employees in the exercise of their rights to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purposes of collective bargaining or other mutual

aid or protection as guaranteed by Section 7 of the Act, or to refrain from any or all such activities.

WE WILL offer Jose T. Villazon immediate and full reinstatement to his former job or, if that job no longer exists, to a substantially equivalent position,

without prejudice to his seniority or other rights and privileges, and make him whole for his loss of earnings, with interest.

IMPORT BODY SHOP, INC.